

**SUMMARY**  
**Virginia Housing Commission**  
**Housing and Environmental Standards Workgroup**  
**Senate Room A, General Assembly Building**  
**November 1, 2012**  
**10:00 AM**

**I. Welcome and Call to Order**

- **Senator John Watkins**, *Chair* called the meeting to order at 10:00AM
- In addition to the invited speakers the following Workgroup members were in attendance:
  - **Workgroup Members:** Delegate David Bulova; Delegate Barry D. Knight; and Senator John Watkins; Brian Buniva, *LeClair Ryan Law Firm*; Ron Clements, *Virginia Building & Code Officials Association*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; Mark Flynn, *Governor Appointee*; John Hastings, *Virginia Housing Development Authority*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Art Lipscomb, *Virginia Professional Fire Fighters*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Ed Rhodes, *Virginia Fire Chiefs Association*; Neal Rogers, *Virginia Housing Development Authority*; Michael T. Toalson, *Home Builders Association of Virginia*; and Cal Whitehead, *Whitehead Consulting*
  - **Staff:** Elizabeth Palen, *Executive Director of VHC*

**II. Proffers**

- **Mr. Zach Robbins**, *Department of Housing and Community Development; Commission on Local Government, Senior Policy Analyst* gave an overview of this year's annual report on local government cash proffer revenues and expenditures in his presentation entitled *Cash Proffers: Revenues and Expenditures* (which is located under "Materials").
- Cash proffers are voluntary offers made by a landowner in the rezoning process. Proffers impose additional requirements to those required by the underlying zoning regulations, usually to mitigate an impact related to the proposed rezoning. Proffers result in conditional zoning as additional restrictions are conditions attached to the specific property. Cash proffers are payments voluntarily offered in writing to offset impacts on general facilities that are generated by rezoning property to permit additional density.
- Sections of code (see attached documents) governs use of cash proffers once the locality has collected them, which are applied to proffers pledged after July 1, 2005. Within localities the statute states that after 7 years of full payment of any cash proffers associated with a zoning case, the locality must advance to those capital improvements outlined in the proffer. However, code states that if seven years pass with no progress towards completing capital projects, the

locality shall forward the unused funds for allocation to that locality's urban or secondary construction.

- The statute also states that unless prohibited by proffers, the locality can use funds for alternative improvements of the same category if they are also in the same vicinity of the original area. The procedure for these alternative improvements relies on public hearing and findings of local government. Additionally, unless prohibited by proffers, the locality can use funds specifically proffered for road or transportation improvements as matching funds for VDOT revenue sharing program.
- Beginning with fiscal year 2007, there were additional transparency requirements. Capital Improvement programs for the localities must include all proffered payments received during the most recent fiscal year, and capital budgets must include the amount of proffered cash payments projected to be used for the budget year. Additionally, localities with population greater than 3500 are required to record any proffers collection or proffer expenditures to the (commisinal) local government on an annual basis.
- For this year's annual survey, they received a 100% response rate, giving a complete data set. Last year's survey results show that 7 cities, 26 counties, and 5 towns having reported some cash proffer activity. Statewide, \$61 million were collected in cash proffer payment, and \$44 million were expended. Revenues and expenditures of proffers were significantly higher in 2012 as opposed to prior fiscal year. Proffers were also categorized, with the largest expenditure in the library category, followed by transportation and schools. 36% of cities and counties over the 12 years have collected proffers. 59% of Virginia's 2010 population collected cash proffers. 87% of the state's 2000-2010 population growth occurred in localities that collect cash proffers.
- **Mr. Robbins:** Eight localities collected over one million dollars in proffer revenue or expenditures in the past five years; and in response to the Housing Commission's request, supplemental information was requested from these eight localities. These areas were asked to provide annual proffer revenue and expenditure data for FY00-FY12, FY12 end of year balance for proffer funds, and copies of cash proffer policies. All eight counties but James City and Fairfax counties responded, and previous proffer report data was substituted for those jurisdictions. The past twelve years have seen a marked decrease in building permits, and increase in proffer balance.
  - Proffers are voluntary offers, and how often these offers are not accepted?
- **Mr. Robbins:** I do not have that information, but the Planning Office for the specific localities may have it.
  - How do localities determine an amount of money to be volunteered as a cash proffer?
- **Mr. Robbins:** Each locality has a cash proffer policy, which outlines how an amount is derived. This process involved a lengthy calculation which analyses things like the impact on schools, base amount per dwelling unit, and in-kind improvements made by the developer. Each locality has a different formula for volunteering proffers.
  - I had a question regarding building permits. Is the development of a piece of property related to the increasing proffer balance, and not linked to the number of building permits?
- **Mr. Robbins:** The number of building permits is an indicator of development. However, not every (building permit is a proffer paid on.), only if it is on a building permit on property where there was a cash proffer involved.

- **Delegate David Bulova:** This appears to be business decision for developer. One could choose to develop an area without entering into a proffer, or make the decision to trade a proffer for a higher amount of zoning density. What does it say in the code about those policies, and to what degree does it lays out what is required to be on the local policy? What flexibility does a locality have?
- **Mr. Robbins** explained that code is pretty (salient?) regarding cash proffer policy. Some language in the code ties it to capital facilities, but nothing details what is required of a policy of a locality.
  - **Del. Bulova:** If there is more development and put more houses in a project, the locality is the winner. More property tax will be collected with more houses developed in the area.
  - Some localities are not on the list, especially those in Northern Virginia who accept proffers. Did these localities respond?
- **Mr. Robbins:** Yes, they did respond. However, they did not make the cut of \$1 million of proffer activity.
  - In the amount collected, proffers make up 50 permits or less on high rise buildings and density. Is permit activity a good gauge for how the proffers work?
- **Mr. Robbins:** The data specifies units in data permits, and that data did not clarify.
  - When building houses, you bring more revenue. However, there breaking point, which varies by locality, of when residential units do bring in more revenues than they cost in services and infrastructure. Building of work-force housing is a net loss to the locality, and someone has to pay for infrastructure. If they didn't have cash proffers system, Prince William County would have a 3.3 cent real estate tax rate, and Loudon County would 4 cent tax rate. If we did not have people moving in paying some extra share of the cost, then the people living there all their lives would have to pay. In Loudon County talk, the amount of immigration into the area will further be discussed.
  - When you publish the annual report, will that extra information, like the locality's proffer policies, be included in an appendix?
- **Mr. Robbins:** No, the report will be as it normally stands with the current year information
  - **Sen. Watkins:** Will you make these requested policies available online?
- **Mr. Robbins:** Yes, we can do that. However, the Commission publishes the report and governs the format.
  - **Delegate Marshall:** The city of Danville has a program called Reimbursable Agreement, which works with a developer as he develops a piece of property. For example, once a development has 30 lots, and 15 are sold, the developer will be reimbursed for the cost of the construction of the street, curb, gutter, water, sewer, and gas lines. It is very controversial, but it seemingly pays back to the city.
  - Since 2007 when the fallout began, have any of the eight jurisdictions reduces their proffer request?
- **Mr. Robbins:** I do not have that history. We just ask for the current year cash proffer policies, and do not know what they were asking for prior to the recession. We have profiles showing the activity that shows an aggregate for what happened at each locality, but do not have individual ask amounts.
  - Do we know if the total assessed values of residential properties in those jurisdictions dropped in value during that time?

- **Mr. Robbins:** I can go back and take a look at the data.
  - I was around when voluntary proffers were made legal, and we seem to have gotten beyond the original intent. Originally, proffers were to be a tool for high growth areas that were facing extensive capital needs to keep up with growth. Is that still how it is being used? Is there enough classrooms and classroom space that would demand that this level of cash proffer to be maintained? It seems we have allowed this tool to be abused as a revenue stream, and that it currently is resulting in the stagnation of growth. This proffer system seems to be discriminatory against low cost, affordable housing. Do you have provisions with that policy to provide a mechanism that a board can furnish some relief for proffers for housing that is affordable?
  - Can you tell us what the assessed values of housing are, and also provide an indication with regard to lowering of proffers? We are exacerbating the problem by ignoring the financial side. It is frightening to see where we are with some cash balances, versus where the billing permits are. Even with multifamily housing, each unit is a tick on the clock for cash proffers of \$20,000-40,000 apiece. This seems unfathomable. How will we provide housing for these people if we let this continue?
  - **Del. Bulova:** We need to focus of information needs with respect to impacts on affordable housing. Proffer system has helped with affordable housing situation. In my area without the proffer system and a means to facilitate extra zoning, the very dense development, like condominiums and apartment, would be developed as single homes in the \$500,000-700,000 range. Having this mechanism that provides flexibility for the localities and offsets extra cost provides a transition to affordable housing.
- However, I could not say that for certain. I am interested in seeing policies on local level, as they play differently in different areas. In my jurisdiction, the proffer system is not abused. Fairfax high school has a thousand more students than it was designed to handle, and they require the proffer system to develop an infill to keep up with the increasing student body. Where the breaking point for this system lies ought to be asses. However, there is a reason developers supported the proffer system, and I would hate to see it go away. We might take a look at policies and be sure they have unintended consequences.
  - **Laura Lafayette:** In Chesterfield County, the bank had taken back twelve lots, with infrastructures and roads already built. The banks ruled to sell each lot for \$25,000 each, with a \$19,000 proffer on each lot. This development would be an excellent location for affordable work force housing, but not possible that a (for-profit) will touch the development given the proffers. It is impossible build and bring to market a price point that is not well beyond the assessed values for that area. It is important to look at waiver possibilities in the policy, as there must be other examples where the infrastructure is already in place. There must be exceptions if we are going to have price point that accommodates a variety of wage earners.
  - **Sen. Watkins:** I agree with Del. David Buliva that Fairfax is a unique area. This calls into question to the state-wide applicability of this program. What is affordable in Fairfax may not be affordable in other areas. To accommodate needs across the state, we need to provide a degree of flexibility.

- In last year's report, there is a map of the localities that were not eligible for proffers.
- **Ms. Susan Williams**, *Department of Housing and Community Development; Commission on Local Government, Senior Policy Analyst*: I would be glad to provide the cash proffer policies that have already been collected, and can to seek out that additional information.

### III. Concerning Loudoun Cash Proffer Program

- **Mr. Charles Yudd**, *Deputy County Administrator*: Introduced his associate (Mr. Dan Sismar), *Capital Budget Manager*, and gave his presentation entitled "Proffer Utilization in Loudon County" (found under "Materials"). Even in a situation where global downturn in economy, our population continues to increase and continue to have strong building permit activity. In response to the discussion of affordable housing, I wanted to add that we do have exemptions built into policies that exclude affordable dwelling units.
- Most of the current cash proffer balance is encumbered, or programmed for particular project. We have active plans for the unencumbered funds that examine particular proffers that are on the books, their cash value and what they can be spent on. These come in by development applications, accrue slowly, and depend what type of capital project that can be spent on. Loudon County has exceeded state and national averages for new residential building permits. Between 2000 and 2010, Loudon County's population has increased 84%, compared to a 13% increase in state population. During this period, the population increase from 188,000 to 327,000, which is comparable to adding the population of the city of Hampton to the county.
- In our dramatic growth, we have a natural increase from those residences from the younger demographic in working and child-bearing years. The county is also very attractive to people coming from other jurisdictions. Population increase of 23% from natural increase, and 61% from migration. Taking the average over past ten years, this population increase equates roughly to adding the population of Madison County, every year. From this, we feel pressure in terms of development activity and population increase, and feel pressure to develop capital facilities needed.
- As growth comes faster, we need to learn how to deal with it faster. Facility development needs to occur before proffer contributions can accumulate to a usable balance. We need to figure out how to get something built and then have proffers offset the costs.
- A remarkable number of facilities have been built since 2001. Facilities like schools, sheriff substation, libraries, parks, community and recreation centers, and group homes have all been built, each of which costing millions of dollars. The proffer system is a tool used to pay for these facilities.
  - In your system, do you also pay for roads?
- **Mr. Yudd**: The per unit cost is for capital facilities, and does not include transportation. Of the schools that have opened since 2001, nineteen where new elementary schools, costing \$20-25 million, eight where middle schools, costing \$40-45 million, and seven where high schools, costing \$100 million. These projects quickly add up to a gigantic amount of money.
  - Capital facility contributions are paid on a per unit basis. There is a lag time between when contribution is made and when it can be spent, which is determined by the (1) time required to build sufficient balance, (2) time required to program into the CIP, and

(3) use restrictions that narrow scope of projects that contributions can be used for.

- **Mr. Yudd:** Expenditure review process begins when the Capital Budget Staff, and the proffer is then reviewed by the Zoning Administrator and Finance Committee. The Proffer Fund is ultimately approved by the Board of Supervisors. To determine number to charge on per unit basis, we rely on guidance of a Fiscal Impact Committee, which stakeholders group whose members include developers, interest groups, local school representatives, and citizens all appointed by the Board of Supervisors. This group recommends capital facility contribution standards that are approved by the Board of Supervisors.
- Depending on the area of the County, there is a range of Capital Facility Contributions available multi-family (\$17,000-23,000), single family attached (\$30,000-40,000) and single family detached housing (\$45,000-59,000). However, many exemptions reduce the amount proffered to the County. Base Density Units and ADU's are excluded. Proffers are reduced for land and in-kind proffers dedicated to the County, and cash proffer contribution are reduced for regional road improvements provided by the developer.
- A series of questions were asked of Mr. Yudd.
  - Concerning affordable dwelling units, do you embody in the conditional zoning a price point on those units?
- **Mr. Yudd:** No, we are saying that housing units would be provided for people of various income levels. Evaluate and come up with a certain number of units
  - How to you monitor that into the future?
- **Mr. Yudd:** As the application moves forward, a particular number of ADU units are identified. They will either show up on a subdivision plat as an ADU unit lot or in a total number of units in a particular building.
  - If years later, a family occupying the ADU doubles their income, how does that affect the market?
- **Mr. Yudd:** This after the fact situation causes some problems in the ADU program, but does not create difficulties in the application process of the capital facility proffer. This activity is hard to monitor, but the family certainly would not be kicked out of their home. Just to be clear, we do not apply capital facility proffers to ADU units.
  - Is there a threshold goal of percentage of affordable units authorized?
- **Mr. Yudd:** With any development project over fifty units, you are obligated to meet the ADU requirement.
  - Do you monitor that on the front end, year after year?
- **Mr. Yudd:** An ADU unit is an ADU unit, and we make sure that carries forward. You would have to amend the development application to change
  - So ADU's are deed restricted?
- **Mr. Yudd:** Yes.
  - Is there an automatic trigger that if you develop over fifty units you must provide ADU's, or is it a density bonus? Is that the incentive?
- **Mr. Yudd:** Both. If you develop over fifty units, you must provide ADU's. However, there are also provisions for density bonuses, where the more affordable housing you provide, the higher you may be able to pump up the over-all density.

- Do you see developments that are not including ADU's? In order to get the density they need to get the project to work, are they going to offer up ADU's to get greater density?
- **Mr. Yudd:** Overall, we see interest in providing ADU's. We also see interest in providing affordable units beyond ADU requirements, which are based on income. By policy, there are no regulations to require Work-Force Units for those who make too much for ADU's but not enough for what is on the market. However, we are encouraging the development of such units, as a typical house in Loudon County will cost roughly \$590,000. There guidelines in place to make housing available for those people who cannot afford housing on the market.
- **Mr. Yudd:** There are more exemptions available on proffers, depending on the application. The capital facility contribution on per unit basis does not include transportation .for 6 year program of CIP, 572\$ million transportation project. Reaction to not getting much at the state level. How to program transportation improvements. No per unit transportation proffer policy. Proffers only provide 3% of the County's CIP.
  - **Mr. Ed Rhoads:** Concerning the number of constructed fire stations listed in the presentation, does that include the number currently under construction?
- **Mr. Yudd:** Yes, they are all built.
- **Mr. Dan Sismar** *Capital Budget Manager:* There are three more fire stations currently under construction .
  - **Mr. Rhoads:** Are these new or renovated?
- **Mr. Yudd:** They are new.
  - **Mr. Rhoads:** Do these new stations improve the fire squad's response time?
- **Mr. Yudd:** Yes, the new stations help. Extensive planning goes in to assessing the necessary response times needed to serve the population coming into various developments. You may notice that the new stations are built in areas of recent population increase and development, where faster response times via closer stations are able to serve the population.
  - **Del. Danny Marshall:** What is the average household income in Loudon County?
- **Mr. Yudd:** Very high. Loudon County has highest median income in the nation. I do not have that information, but can find it.
  - **Del. Marshall:** Is it higher than \$100,000?
- **Mr. Yudd:** Yes
  - What's your property tax rate?
- **Mr. Yudd:** \$1.23 per 100\$ of assessed value
  - **Del. Bulova:** The Fiscal Impact Committee structure seems like a good practice. Is Loudon County unique in this, or is it a feature commonly included in other locality's proffer systems?
- **Mr. Yudd:** I have no knowledge of other localities, I just know that Loudon has one in place.
  - **Del. Bulova:** Within those policies in the eight localities, is it a relatively common practice?
- **Mr. Yudd:** We found it to be very valuable, as stakeholders are users of facilities and members include people in the development committee The input gauges the number of facilities needed and a ratio of this type of facility to this population number.
  - **Mr. Ted McCormick, Virginia Association of Counties:** What does slide 24 show? Does this equate to a proffer per unit paid?

- **Mr. Yudd:** The slide depicts the total value of what we received in those years of the per unit capital facility contribution in the aggregate that came in that year.
  - Despite having the poster child for worst proffer policy in the state, in 2012, overall average was less than \$10,000.
- **Mr. Sismar:** Yes, all cash proffers received in 2012 by the county divided by number of units was less than \$10,000
  - **Sen. Watkins:** I had a question regarding slide 17. Range of cash proffers does not get below \$10,000 although the average proffer was less than that amount.
- **Mr. Yudd:** This is due to the intricacy of the program. All of the exemptions have not been netted out yet.
  - Is transportation included in slide 24?
- **Mr. Yudd:** No.
  - Regarding slide 17, the point of the program lies in the fact that although a single family unit can start at \$59,000, the actual amount paid is much less.
  - **Ms. Lafayette:** However, the average \$10,000 does not include the cash value of other contributions the developer made. Including the cash value of other proffers and developer improvements, what would that number look like?
- **Mr. Sismar:** The number would be higher, but I cannot estimate at this point
  - On slide 24, what percentage are proffered lots and what percentage are non-proffered lots, pulling that average down? Would that number rise when more lots coming through zoning with a higher proffer number was in place?
- **Mr. Yudd:** We agree that the number would rise with increased proffer usage, but cannot tell you exact numbers
  - **Sen. Watkins:** How many blighted units are already zoned in the county?
- **Mr. Yudd:** We can get that information on the development potential of blighted units.
  - When you developed your policy on proffers did you collaborate with any other localities?
- **Mr. Yudd:** In 2000-2001, while grappling with how to revise comprehensive plan and long-range land use plan, we did look into other jurisdictions, and saw a wide range of policies. Some were rather prescriptive, and others more flexible. We decided to create a policy somewhere in between.
  - Regarding Affordable Dwelling Units and Work-Force Housing, what are the categories of area median income that you require? Are there percentages?
- **Mr. Yudd:** Yes, there are areas of percentage area median income. If you fall into that percentage, you qualify for an ADU. Many do not qualify for an ADU, but still find it difficult to find a house. I cannot quote percentages, but I can make them available.
  - I believe I know the percentages. For those who fall below 30% of the median income qualify for rental ADU. Those in the range of 30-70% of median income are eligible to own an ADU. Those in the range on 70-100% median income are eligible for Work-Force Housing. Would developers be given a credit on a proffer for providing the Work-Force Housing units?
- **Mr. Yudd:** No, work force is completely separate, therefore, we need to increase opportunity for those people in that income range.
  - Would a developer get credit for regional road improvements?
- **Mr. Yudd:** We would look at value of road improvement; and if you provide something beyond the mitigation impact of your development application, you should get credit.

- Other than internal roads, which are the responsibility of developer, is there any instance where you would accept a voluntary cash proffer for road improvements?
- **Mr. Yudd:** There are situations where an agreement is reached to provide the cash equivalency of what an improvement had cost. Can be problematic because once the contribution is given, the money can be held in(esker). We would advocate that the improvement built, or to apply the cash to other funds and get the improvement done.

#### IV. Alternative On-Site Sewers

- **Mr. Eldon James, Public Policy Consultant; Fauquier County:** gave his presentation entitled “Alternative On-Site Sewers” (available under “Material”). He outlined the purposes of his presentation which were to address Group 1, low income household who cannot afford repair a failing system, and Group 2, bad actor that refuses to make repair.
- Group 1 is addressed through revisions to the betterment loan and onsite sewage indemnification fund statute. Group 2 is addressed by clarifying current local civil penalties authority and providing additional authority to local government after all other options have been exhausted to make repairs and place a lien on the property to recover the costs in the same way localities can address nuisances in (15.2-1115). Previously discussed draft changes are laid out in the attached document.
- Changes to lines 131-134 add needed clarification related to concern of a locality lacking a good inventory of the systems. It has been a challenge to get in inventory of all systems into the state-wide dataset.
  - We don’t know how many systems are out there?
- **Mr. James:** I suggest looking to the Health Department, who can give an estimate. They working hard to get all systems into the database, but are not complete yet. .
  - If I get a building permit for a sewage system, do I have to designate that it is an AOSS?
- **Mr. James:** If you put in an alternative system, it will be documented. The problem is the taking inventory older systems that predate much of code changes over the years and put those in the database.
  - How many years to these go back?
- **Mr. James:** I couldn’t give an exact number, but they go back many years.
- **Mr. Allen Knapp, Division Director, Department of Health:** The state-wide database began in 2005. Thus, as of 2005, we began capture all the new system. The uncertainty in those installed prior those date. Local health departments have records of permits and installations. We do not have all the systems in the database yet, but it is an ongoing effort
  - **Mr. McCormack:** For purposes of discussion, there approximately 60,000 AOSS system throughout the state?
- **Mr. Knapp:** Yes that is the current estimate.
  - How many systems are in the database?
    - **Mr. Knapp:** Upwards of 10,000 , but can get that information
    - all over Virginia or mostly in one area (northern Virginia)
- Yes, both, predominantly in northern and eastern VA and all over. Distribution is equal to the population distribution, more in northern and eastern regions than southwest

- **Mr. James:** This is related to important for changed proposed on lines 131-134. There was concern that if a locality did not have a complete inventory and went ahead with a local civil penalties program, they would be challenged in court because it didn't meet (Bi). This clarifies that this would not be a reason to dismantle the program in court. The locality cannot take action against someone who has not been notified, and cannot take action against someone not in the database.
  - **Del. Bulova:** Going back to lines 32-32 lines, which states that you cannot issue summons if someone has not been notified, was the time between being notified and being fined for issued a summoned addressed in the document?
- **Mr. James:** They have to initiate repairs within 60 days, as stated in line 143.
  - Before buying a house, does a new property owner need to be notified of the AOSS?
- **Mr. James:** That is not addressed here. Currently, if you were to build a house with an AOSS, it would be recorded in the land records. If a transfer takes place that would come up in a title search.
  - When buying a new home, does the real estate agent or someone need to make you aware of the presence of an AOSS in the home.
- **Mr. James:** That is not addressed here, but no, I do not believe that is a requirement. Continuing on to the new sections detail that if all else has failed the locality can make the repairs and place a lien on the property, which closely follows code for nuisances.
  - **Mr. Mark Flynn:** Raw sewage out in the open is an imminent threat to public health and safety. The sixty day time limit to fix the system after notice strikes me as a long time for that to go uncorrected.
- **Mr. James:** We would have appreciated more opinions in our discussion, but the sixty day limit was the compromise we reached.
  - How long has the civil schedule of penalty been afforded to the health department for enforcement on a local level?
- **Mr. James:** Three years.
  - Is Loudon County the only area that uses this tool?
- **Mr. James:** Yes, correct. Other counties have discussed it. However, they feared that they would be sued, and program would be dismantled because they don't have 100% of systems in their database
  - Because Loudon County has a concentrated number of AOSS, they have taken an active role in inspecting and maintain the systems. That is why they have such a robust program.
  - **Del. Marshall:** Since this is coming to my legislative committee, could I get a map of where the 60,000 known systems are in the state?
- **Mr. James:** I will work with the Health Department to give you what we can do.
  - **Sen. Watkins:** requested that the communication from Chip Dicks be read.
- **Ms. Elizabeth Palen, Executive Director of VHC:** "I want to convey the position of the Virginia Association of Realtors on alternative septic system legislation. VAR's board of directors adopted a position to support the attached legislation which is limited to clarifying that localities do not have the authority to impose cash bonds on owners of properties with an AOSS. VAR's board of directors further adopted to (oppose) any further change to the AOSS statutes."

- **Mr. James:** Yes, I am also familiar with the email. We did communicate this to Mr. Dicks, and his representative also participated in work group meetings.
- **Mark Flynn:** Going back to the sixty day term for imminent threat, the code (in line 136) describes the general civil penalty for any kind of violation, one that is not an imminent threat to public safety. They also have a sixty day term. (In Subsection F. I didn't see a definition of "imminent threat to public health and safety" I didn't see one in the context)
- **Sen. Watkins:** Is there a definition of an imminent threat to public safety?
- **Mr. Mark Flynn:** I would asked committee to look into shortening the time, particularly as it comes to the full Housing Committee.
- **Sen. Watkins:** As a work-group, do we recommend this to the full Housing Commission? If we do not, is there something else recommended? I would like to hear from the health department. How do you see implementing this within the context of local governments?
- **Mr. Alan Knapp:** The proposal is divided into two pieces. One piece is directed at localities. From state perspective, do not see much involvement or burden. Authority is assigned to the local government to make repairs or apply liens.
- **Sen. Watkins:** My concern is that we do not know where places are in many of the jurisdictions. To notify people in local government of the issue, we must have a complete inventory.
- **Mr. Knapp:** Perhaps I overstated the case earlier. The local health departments have relatively complete inventory of the systems. From state perspective, the problem is getting this information into state-wide database.
  - **Sen. Watkins:** We are discussing changing state law to enhance enforcement. However, we do not know who we are enforcing that state law on, as there are a lot of people not on the database. If there is an appeal from a local government decision, it comes to the state level; and becomes an issue of enforcing state law. We need to enhance the requirement regarding perfecting the database at the state level. The only way to do that is to ensure that the Localities have the entire list and turn it over to the state. After this, I would say go ahead with the state enforcement.
  - The problem is that the localities do not have the data. It is in the health department. One must go to local health department, which is a state agency, to get permit for AOSS. The inventory, whether it is at the local level or aggregated to state database, is really state information.
  - **Sen. Watkins:** It seems to me that a local building official is going to get called in the middle to issue a notice of violation. This puts the state local government in a bad position. We need to do more research before we can pass a law with detailing these time limits and fines. We should only give authority to local government that has perfected that list, so state has all of them.
  - The state must perfect list, because they have the permits.
  - What trigger will be is a problem on that property. So whether the property is in the database or not, a failure will produce sewage on surface. Then, a notice violation will follow, which starts proceeding on the property. Its existence in the database or not is not the real issue.
  - This is existing law

- We have two full meetings between now and the end of the year, don't we?
  - **Ms. Palen:** There is one at Hotel Roanoke on November 14 and one meeting to be held on December 5, 2012.
  - **Sen. Watkins:** meeting on the 14<sup>th</sup> conflicts with the Senate Finance Committee
  - Between the 14<sup>th</sup> or December 5<sup>th</sup> can you contact each locality to check inventory and report back to us?
- **Mr. James:** Yes, I can have that to you by November 14.
  - What is the percentage of failure on an annual basis?
- **Mr. Knapp:** This question has multiple answers. Getting that information for all systems across the state is difficult because no surveillance exists, except for that on alternative systems. With respect to alternative systems, failure rate is low. Initial set of data showed 30% of systems having a problem; but when these were investigated, most problems were minor, and did not constitute failure status. The failure rate was around 5%, which is low overall. The problem is that when a system fails, it becomes an acute problem. I can include that data as well
  - **Sen. Watkins:** There are many citizens that installed these systems before 2005, who are completely unaware they have an AOSS. We need to provide a means of notification, so they can be aware and be attentive of problems with these systems.
  - **Mr. James:** I agree this is a huge concern. That is why the safety valve was put in detailing that no enforcement can happen to someone who has not been notified. This is a protection, so someone unaware of their AOSS is not blind sighted.
- Concerning the Loudon study, 30% problem versus 5% failure rate, the problem lies with the problem rate. If you have a minor problem, but do not fix it, the problem exacerbates.
  - **Mr. Ron Clements:** The civil penalties at locality level, assuming they have a robust list, are not being utilized except for Loudon County, why?
- **Mr. James:** That authority hasn't existed very long. Loudon has the largest number of AOSS, and was, thus, the first to begin the programs. At the county attorney level, the concern was getting sued on it and it gets thrown out. The county attorney cautioned others not to move too fast. This legislation will open the door for new localities to use the program.
  - **Sen. Watkins:** We need the database complete.
  - **Mr. James:** On one hand, we have the need to deal with issue, and it is becoming more imminent. On the other hand, we must ensure protection of the property owner, which is provided as the system must be put in the database and notified before enforced can occur.
  - **Del. Bulova:** On line 127, we have already discussed that use of the enforcement provisions must provide notice to owner. The new language on lines 131-34 provides specificity as with what needs to happen to provide the notification. My confusions lied in that the document then refers to section F, which describes when you have an imminent threat on the ground. How does that turn into an initial notification requirement, and how those two things match up together? I just wanted to bring that to your attention.
- **Mr. Flynn:** My recommendation is to pick up some of the appropriate language in Subsection F and copy it into lines 133-34.
  - Under B, the system to notify property owner of their maintenance responsibility for AOSS systems is detailed. If you fail to get your system inspected, then you

will be fined a civil penalty( ) 126; but if system failed and sewage on the ground then F kicks in.

- **Sen. Watkins:** We will delay action on the legislation. Doesn't there need to be action if this has been referred to this sub group?
- A member of this commission is not going to put this bill in, Delegate Linginfelter will put the bill in, correct?
- **Sen. Watkins:** Is everyone satisfied with that approach? With regard to the draft Mr. Dicks forwarded, is there any action desired on that?
- I believe attorney general has already opined that cash deferments are illegal. This just codifies that.
- **Sen. Watkins:** Are there any further comments regarding AOSS?
- **Del. Bulova:** Regarding line 59, we did not discuss the raise of the contribution from \$10 to \$25, I'd like more information. That extra 15\$ would come out of existing charge without increasing charge, shifting money from one place to another. Is that okay with the department of health or whoever is losing that money?
- **Mr. James** This would come out of existing fee, and take out some of operating cost money that health department has. The Delegate will put in a budget amendment to make up for that shortfall.
  - **Sen. Watkins:** Thank you.

## V. Public Comment

- **Sen. Watkins** asked if anyone of the public had comments.

## VI. Adjourn

- Hearing no public comment, **Sen. Watkins** adjourned the meeting at 12:30 P.M.